

DD/M&S 74-1341

16 APR 1974

MEMORANDUM FOR: Legislative Counsel

ATTENTION : Mr.

SUBJECT : H.R. 188 and H.R. 9783, Bills on Criminal
Justice Information Storage and Dissemination

DD/M&S Registry
File Legal

STA

1. Pursuant to your request of 9 April 1974, we have completed a review of the two subject bills. Taken together, these two bills essentially seek to achieve the same objectives as Senate bills S. 2963 and S. 2964, which we commented upon in our memorandum to you dated 18 March 1974.

2. Both bills contain restrictions on the collection, storage and dissemination of criminal justice information similar to the Senate bills; however, they are, in fact, even more restrictive and their enactment into law would pose very serious problems for the Office of Security. H.R. 188 would appear to prohibit Agency access to criminal arrest records of any kind, including FBI Identification Records, and would also require a massive "purge" project to remove all such information from Office of Security investigative files.

3. Since CIA is not a Criminal Justice Agency and arrest data is collected and maintained only as one portion of our personnel security investigations - not for its own sake - it is uncertain whether the definition of a "criminal data bank" as outlined in H.R. 9783 would apply to our security files. Nevertheless, should this be determined to be the case, again, it would seem likely that this type information would have to be deleted from our files.

4. The position of the Office of Security in regard to H.R. 188 and H.R. 9783 remains the same as that stated previously in our memorandum concerning the Senate bills: that

every effort should be made to secure exemptions for the Agency from those provisions of the legislation that would degrade our ability to carry out an effective personnel security program.



for Charles W. Kane
Director of Security

cc: DD/M&S

STA

☐ UNCLASSIFIED☐ INTERNAL
USE ONLY☐ CONFIDENTIAL☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Criminal Justice Data

FROM:

OLC
7D35

EXTENSION

NO.

DD/M&S 74-1272

DATE

9 April 1974

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDM&S

2. Mr. 4/12/74 *D*3. *DIOS*4. *attn: W* 15 APR 1974

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Your comments were previously requested concerning S. 2963 and S. 2964, bills which control the storage and dissemination of criminal justice data, to determine the effect upon the Agency. Chairman Rodino of the House Judiciary Committee has now requested Agency comments on H. R. 12474 (S. 2964) and H. R. 12475 (S. 2963), the identical bills in the House, as well as comments on the attached bills, H. R. 188 and H. R. 9783 on the same subject.

In order to prepare the Agency reply or replies on all of the bills, we would appreciate your additional comments on H. R. 188 and H. R. 9783.

Please respond no later than 16 April.

Assistant Legislative Counsel

3-4 My fault on the delay. Would very much appreciate your comments ASAP - directly to OLC, with copy to DD/M&S. Your last memo was 18 March 74 on the same topic.

☐ SECRET☐ CONFIDENTIAL☐ INTERNAL
USE ONLY☐ UNCLASSIFIED

93^d CONGRESS
1ST SESSION

H. R. 188

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide for the dissemination and use of criminal arrest records in a manner that insures their security and privacy.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That (a) title 28 of the United States Code is amended by*
- 4 *inserting immediately after chapter 175 the following new*
- 5 *chapter:*

"Chapter 177—DISSEMINATION OF ARREST

RECORDS

"Sec.

"3101. Dissemination by Federal officer or employee; only to law enforcement agencies.

"3102. Prohibition of dissemination, maintenance and use of arrest records.

"3103. Inspection of arrest records.

"3104. Prevention of illegal dissemination or use; correction of incorrect arrest records.

"3105. Court orders allowing dissemination, maintenance, or use in certain cases.

"3106. Questions concerning arrest.

"3107. Penalties.

"3108. Definitions.

"3109. Regulations.

"3110. Effective date.

3 **"§ 3101. Dissemination by Federal officer or employee;**
4 **only to law enforcement agencies**

5 " (a) No officer or employee of the United States or of
6 any federally assisted law enforcement agency may disseminate in any manner any criminal arrest record to any person
7 other than another officer or employee of a law enforcement
8 agency.
9

10 " (b) No officer or employee of any law enforcement
11 agency may disseminate to any person, other than another
12 officer or employee of a law enforcement agency, a criminal
13 arrest record received from an officer or employee of the
14 United States or of a federally assisted law enforcement
15 agency.

1 "§3102. Prohibition of dissemination, maintenance, and
2 use of arrest records

3 "(a) No officer or employee of the United States or of
4 a federally assisted law enforcement agency, and with respect
5 to a criminal arrest record received from an officer or em-
6 ployee of the United States or of a federally assisted law en-
7 forcement agency, no officer or employee of any law
8 enforcement agency, may disseminate to any person a crim-
9 inal arrest record—

10 "(1) relating to an arrest which occurred more
11 than two years before the date of such dissemination
12 and concerning which there is no prosecution pending
13 in a court;

14 "(2) relating to an arrest concerning which the
15 prosecuting attorney responsible for conducting any
16 prosecution arising out of such arrest agrees no prosecu-
17 tion is warranted and that no criminal arrest record
18 should be kept; or

19 "(3) which is expunged, or prohibited from being
20 maintained, used, or disseminated under a provision of
21 the law of the State in which the arrest which is the

1 subject of such record occurred, or by order of a court
2 having jurisdiction with respect to such arrest.

3 “(b) No officer or employee of any law enforcement
4 agency may disseminate any arrest record specified in sub-
5 section (a) which was received by such officer or employee
6 from any officer or employee of the United States or of a
7 federally assisted law enforcement agency.

8 “(c) Clause 1 of subsection (a) shall not apply to a
9 criminal arrest record concerning any person who has been
10 convicted of at least one felony under the laws of the United
11 States or of any State.

12 “(d) No officer or employee of the United States or of
13 a federally assisted law enforcement agency may maintain or
14 use any criminal arrest record which is prohibited from being
15 disseminated under subsection (a) except that a court may
16 maintain and use a sealed criminal arrest record.

17 “(e) The dissemination, maintenance, or use of a crim-
18 inal arrest record specified in subsection (a), (b), or (d)
19 may be permitted by or in accordance with a court order
20 issued under section 3105.

21 **“§ 3103. Inspection of arrest records**

22 “Every person shall have the right to inspect any
23 criminal arrest record concerning him maintained by any
24 officer or employee of the United States or of a federally

25 assisted law enforcement agency. The officer or employee of
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1 the United States or of such law enforcement agency whose
2 duty it is to maintain criminal arrest records shall prescribe
3 such regulations as are necessary to enable any person, upon
4 request and proper identification, to procure the criminal
5 arrest record concerning such person maintained by such
6 officer or employee at the time of the request. In addition,
7 such officer or employee shall keep, and upon such request,
8 disclose to such person the name of all persons to whom such
9 officer or employee transmitted or communicated such arrest
10 record during the six-month period preceding the request.

11 **"§3104. Prevention of illegal dissemination or use; cor-**
12 **rection of incorrect arrest records**

13 "If at any time a person has reason to believe that a
14 criminal arrest record concerning him will be maintained or
15 disseminated by any officer or employee of the United States
16 or of any federally assisted law enforcement agency, in viola-
17 tion of the provisions of this chapter, or that information in a
18 criminal arrest record maintained by such an officer or em-
19 ployee is incorrect, such person may petition any United
20 States district court to issue an order enjoining such mainte-
21 nance or dissemination, or correcting such record.

22 **"§3105. Court orders allowing dissemination, mainte-**
23 **nance, or use in certain cases**

24 "(a) The Attorney General or any officer of a law

1 court of competent jurisdiction for, and such court may grant,
2 after a hearing, an order authorizing or approving the dis-
3 semination, maintenance, or use of a criminal arrest record,
4 which is otherwise prohibited under section 3102, by the
5 Attorney General or by an officer of a law enforcement
6 agency, if the applicant can show by substantial and con-
7 vincing evidence that there is a compelling public interest
8 in such dissemination, maintenance, or use.

9 “(b) Each application for an order authorizing or ap-
10 proving the dissemination, use, or maintenance of an arrest
11 record shall be made in writing upon oath or affirmation
12 to a Federal court of competent jurisdiction and shall state
13 the applicant's authority to make such application. Each
14 application shall include the following information:

15 “(1) the identity of the law enforcement officer
16 making the application, and the officer authorizing the
17 application; and

18 “(2) a full and complete statement of the facts
19 and circumstances relied upon by the applicant, to jus-
20 tify his belief that an order should be issued.

21 “(c) The court may require the applicant to furnish
22 additional testimony or documentary evidence in support
23 of the application.

24 “(d) Orders granted under this section shall be sealed
25 by the court. Custody of the orders shall be wherever the

7

1 court directs. Such orders shall be disclosed only upon a
2 showing of good cause before a court of competent jurisdic-
3 tion and shall not be destroyed except on order of the issu-
4 ing or denying court.

5 “(e) Any violation of the provisions of this section
6 may be punished as contempt of the issuing or denying
7 court. ...

8 **“§ 3106. Questions concerning arrest**

9 “In responding to any question concerning any arrest
10 the respondent may consider such question to apply only
11 to an arrest the record of which may be lawfully dissemi-
12 nated, maintained, or used by the Attorney General. No
13 person shall be required to waive the right granted to him
14 by this section nor shall any person be penalized in any
15 manner for exercising such right.

16 **“§ 3107. Penalties**

17 “(a) Any person with respect to whom a criminal
18 arrest record has been maintained, disseminated, or used in
19 violation of this chapter shall have a civil cause of action
20 against the person responsible for such violation and shall
21 be entitled to recover from any such person actual damages
22 and reasonable attorney's fees and other litigation costs
23 reasonably incurred. Exemplary damages may be granted
24 by the court in appropriate cases.

1 a criminal arrest record knowing such dissemination, main-
2 tenance, or use to be in violation of this Act shall be fined
3 not more than \$1,000 or imprisoned for not more than one
4 year, or both.

5 **"§ 3108. Definitions**

6 "As used in this chapter—

7 "(a) The term 'law enforcement' means any activity
8 pertaining to crime prevention, control, or reduction or the
9 enforcement of the criminal law, including, but not limited
10 to, police efforts to prevent, control, or reduce crime or to
11 apprehend criminals, activities of courts having criminal ju-
12 risdiction and related agencies, activities of corrections, pro-
13 bation, or parole authorities, and programs relating to the
14 prevention, control, or reduction of juvenile delinquency or
15 narcotic addiction.

16 "(b) The term 'State' means any State of the United
17 States, the District of Columbia, the Commonwealth of
18 Puerto Rico, and any territory or possession of the United
19 States.

20 "(c) The term 'Federal court of competent jurisdiction'
21 means a United States district court or a United States court
22 of appeals.

23 "(d) The term 'criminal arrest record' means records
24 and related data (including fingerprints) compiled by law
25 enforcement agencies for purposes of identifying criminal of-

1 fenders and alleged offenders and maintaining as to such
2 persons summaries of arrests and the nature and disposition
3 of criminal charges arising out of such arrest.

4 “(e) The term ‘federally assisted law enforcement
5 agency’ means a public agency which performs as its prin-
6 cipal function activities pertaining to law enforcement and
7 which is funded, in whole or in part, from grants received
8 under the Omnibus Crime Control and Safe Streets Act of
9 1968 (42 U.S.C. 3731-3737).

10 **“§ 3109. Regulations**

11 “The Attorney General, after consulting with officers and
12 members of State and local law enforcement agencies, shall
13 prescribe such regulations as he deems necessary to carry
14 out the provisions of this Act.

15 **“§ 3110. Effective date**

16 “This chapter shall take effect on and after the one
17 hundred and twentieth day after the date of enactment of
18 this chapter, except for section 3102 (d) which shall take
19 effect at the end of the one year period beginning on the
20 date of enactment of this chapter.”

21 (b) The chapter analysis of part VI of title 28 of the
22 United States Code is amended by inserting immediately
23 after:

“175. Civil Commitment and Rehabilitation of Narcotic Addicts”

99th CONGRESS
1st Session

H. R. 133

A BILL

To amend title 28 of the United States Code to provide for the dissemination and use of criminal arrest records in a manner that insures their security and privacy.

By Mr. EDWARDS of California

JANUARY 3, 1973

Referred to the Committee on the Judiciary

93D CONGRESS
1ST SESSION

H. R. 9783

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 1973

MR. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

ABILL

To regulate the collection, storage, and dissemination of information by criminal data banks established or supported by the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

DEFINITIONS

4 SECTION 1. As used in this Act—

(1) the term "criminal data bank" means any criminal information data collection or storage operation which collects or maintains data identifiable to individuals and not generated in the course of such operation's official duties of the apprehension, adjudication, confinement or rehabilitation of persons charged with

1 or convicted of criminal offenses, and which is financed in
2 whole or in part, directly or indirectly, by the United
3 States, and which utilizes computers and data processing,
4 or manual techniques, or a combination of such tech-
5 niques, to compile data for dissemination to any person;

6 (2) the term "data" means any information on the
7 allegedly criminal activities of any person, or pertaining
8 to the apprehension, adjudication, confinement, or re-
9 habilitation of any person on account of such activities;

10 (3) the term "criminal justice agency" means any
11 public agency directly and principally engaged in the
12 apprehension, adjudication, confinement, or rehabilita-
13 tion of persons charged with or convicted of criminal
14 offenses; and

15 (4) the term "State" includes the District of Co-
16 lumbia, the Commonwealth of Puerto Rico, Guam, the
17 Virgin Islands, and any other territory of the United
18 States.

19 DATA CONTENT

20 SEC. 2. (a) No criminal data bank shall collect, main-
21 tain, or disseminate any information identifiable to an in-
22 dividual, unless such information is data which—

23 (1) is recorded by an officer or employee of a

24 criminal justice agency in the performance of official
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25 duty;

1 (2) is, under the laws of the State of its origin,
2 open to public inspection; and

3 (3) arises directly from the apprehension, adjudi-
4 cation, confinement, or rehabilitation of a person charged
5 with or convicted of a criminal offense.

6 (b) Each criminal data bank shall provide for the
7 periodic updating and systematic outside audit for accuracy
8 of the data contained therein, under such rules as the Attor-
9 ney General shall prescribe. Such rules shall provide that—

10 (1) any addition, correction, or deletion shall be
11 made within ninety days of the receipt of the informa-
12 tion to be added, corrected, or deleted; and

13 (2) corrections shall be made in all copies of any
14 data in possession of the criminal data bank.

15 (c) Each criminal data bank shall remove and destroy
16 outdated data. Outdated data includes—

17 (1) arrest records of an individual that are at least
18 two years old, if no other arrest of such individual is
19 on record at such data bank as having occurred during
20 such two-year period; and

21 (2) records of any conviction, if the conviction is
22 ten years old and no later conviction is on record at such
23 data bank as having occurred during such ten-year
24 period.

25 (d) No criminal data bank shall collect, maintain, or

1 disseminate any information which is defined as a juvenile
2 record under the law of the State of the origin of such in-
3 formation.

4 (e) No criminal data bank shall collect, maintain, or
5 disseminate any data relating to an offense for which the
6 maximum penalty imposed by law is less than six months im-
7 prisonment or a fine of not more than \$100.

8 (f) Each criminal data bank shall maintain a com-
9 plete record of the sources of each item of data on record
10 at such bank.

11 ACCESS AND DATA USE

12 SEC. 3. (a) No criminal data bank shall release any
13 data to any person who is not an official of a criminal
14 justice agency who seeks such data in the course of official
15 duty, nor shall any person not in the course of official duty
16 as such an official seek any data from a criminal data bank.

17 (b) Each criminal data bank shall maintain a complete
18 record of to which persons, representing what organizations,
19 and on what dates data has been disseminated.

20 (c) The identity of the official seeking data, and the
21 purpose for which such data are sought shall be verified in
22 each instance data are sought, under such rules as the At-
23 torney General shall establish.

24 (d) No data received from a criminal data bank shall

1 under subsection (c), nor shall any recipient of such data
2 divulge such data to any person other than other officials
3 of the criminal justice agency employing the recipient. Each
4 copy of data transmitted from a criminal data bank shall
5 conspicuously give notice of the penalties for violations of
6 this subsection.

7 (c) Data may be divulged by a criminal data bank for
8 the purposes of outside audits under section 2 (b) .

9 (f) Data may be disseminated by a criminal data bank
10 for the purposes of research, but no data so disseminated shall
11 be identifiable to any person.

12 (g) Each copy of data disseminated by a criminal data
13 bank shall contain a clear statement of—

14 (1) the data bank from which it is disseminated;
15 and

16 (2) the original source or contributor of such data.

17 RIGHT TO INSPECT, CHALLENGE, AND CORRECT DATA

18 SEC. 4. (a) Each criminal data bank shall provide for
19 the inspection and challenge by any person of data con-
20 tained in such criminal data bank and identifiable to that
21 person, and for the correction of any data found to be er-
22 roneous upon such inspection and challenge.

23 (b) A criminal data bank may make reasonable rules
24 to provide for the verification of the identity of any person

25 seeking to inspect data under subsection (a)

1 INDEPENDENCE OF DATA BANK

2 SEC. 5. Each criminal data bank shall be independent
3 and distinct from any other data collection or storage
4 operation.

5 PENALTIES

6 SEC. 6. (a) With respect to any criminal data bank
7 established under the authority of the United States—

8 (1) whoever being the officer or employee of such
9 criminal data bank willfully violates any provision of
10 this Act or any rule prescribed by the Attorney General
11 under this Act, and whoever being a recipient of data
12 from such criminal data bank divulges any such data
13 in violation of section 3 (d) shall be fined \$5,000 and
14 imprisoned not more than five years;

15 (2) whoever is aggrieved by any violation of this
16 Act by a criminal data bank or any of its officers or em-
17 ployees or any rule prescribed by the Attorney General
18 under this Act, may, in a civil action, obtain injunctive
19 and declaratory relief against the United States, or
20 against such criminal data bank, officer, or employee, and
21 recover actual and punitive damages, but in no case less
22 than \$1,000 per violation.

23 (b) With respect to any criminal data bank other than
24 one established under the authority of the United States,

25 the Attorney General, upon finding any substantial violation
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1 by such criminal data bank, or any of its officers or em-
2 ployees—

3 (1) shall order the termination for a period of not
4 more than two years of all Federal financial assistance
5 to such criminal data bank,

6 (2) shall make an order that no data bank estab-
7 lished under the authority of the United States shall
8 furnish any data to such criminal data bank during a
9 period of not more than two years, or

10 (3) shall order both such termination of financial
11 assistance and such termination of furnishing data.

12 EFFECTIVE DATE

13 SEC. 7. This Act shall take effect six months after the
14 date of its enactment.

93d CONGRESS
1st Session

H. R. 9783

A BILL

To regulate the collection, storage, and dissemination of information by criminal data banks established or supported by the United States.

By Mr. EDWARDS of California

AUGUST 1, 1973

Referred to the Committee on the Judiciary

ROUTING AND RECORD SHEET

DD/M&S Registry
File Legal

SUBJECT: (Optional)
Criminal Justice Data

FROM: OLC
7D35

EXTENSION

NO.

DD/M&S

74-1277

DATE

9 April 1974

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDM&S

2. Mr. [redacted]

4/12/74 D

3. D/O S

4. attn: [redacted]

5.

6.

7.

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In order to prepare the Agency reply or replies on all of the bills, we would appreciate your additional comments on H. R. 188 and H. R. 9783.

Please respond no later than
16 April.

STAT

AT EO-DD/M&S: [redacted]:kmg (15 Apr 74)

Distribution:

Orig RS - Adse w/Att (DD/M&S 74-1277)

1 - DD/M&S Subject

dtd 9 Apr 74

DD/M&S 74-1277: RS/to DD/M&S fr Ass't LC, subj: on HR 188 and HR 9783 re Criminal Justice Data for

Comments - request

Assistant Legislative Counsel

4-1003 related & w/RHW

3-4 My fault on the delay. Would very much appreciate your comments ASAP - directly to OLC, with copy to DD/M&S. Your last memo was 18 March 74 on the same topic [redacted]

STAT